

in this notice and the record supporting this notice.

EPA notes that all options and issues discussed in its proposal are still under consideration for the final rule. This notice merely makes new information available for public review that the Agency will consider in making decisions for the final rule.

Summary of Proposed Rule for Existing Facilities

The proposed rule would implement section 316(b) of the Clean Water Act (CWA) for certain existing power producing facilities that employ a cooling water intake structure and that withdraw 50 million gallons per day (MGD) or more of water from rivers, streams, lakes, reservoirs, estuaries, oceans, or other waters of the U.S. for cooling purposes. The proposed rule constitutes Phase II in EPA's development of section 316(b) regulations and would establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at these facilities. The proposed national requirements, which would be implemented through National Pollutant Discharge Elimination System (NPDES) permits, would minimize the adverse environmental impact associated with the use of these structures.

The proposed rule would establish location, design, construction, and capacity requirements that reflect the best technology available for minimizing adverse environmental impact from the cooling water intake structure based on waterbody type and the amount of water withdrawn by a facility. The Environmental Protection Agency (EPA) proposed to group surface water into five categories—freshwater rivers and streams, lakes and reservoirs, Great Lakes, estuaries and tidal rivers, and oceans—and establish requirements for cooling water intake structures located in distinct waterbody types. In general, the more sensitive or biologically productive the waterbody type, the more stringent the requirements proposed as reflecting the best technology available for minimizing adverse environmental impact. Proposed requirements also vary according to the percentage of the source waterbody withdrawn and facility utilization rate.

A facility may choose one of three options for meeting best technology available requirements under the proposed rule. These options are (1) demonstrating that the facility's existing design and construction technology, operational measures, and/or restoration

currently meets specified performance standards; (2) selecting and implementing design and construction technologies, operational measures, or restoration measures that meet specified performance standards; or (3) demonstrating that the facility qualifies for a site-specific determination of best technology available because its costs of compliance are significantly greater than either (1) the costs considered by the Agency during the development of the rule, or (2) a site-specific determination of the benefits of compliance with the proposed performance standards. The proposed rule also provides that facilities may use restoration measures in addition to or in lieu of other technology measures to meet the performance standards established in the rule or on a site-specific basis.

EPA expects that the proposed regulation would minimize adverse environmental impact, including substantially reducing the harmful effects of impingement (organisms trapped against intake screens or other barriers at the entrance of cooling water intake structures) and entrainment (organisms drawn into a cooling water intake structure), at existing facilities over the next 20 years. As a result, the Agency anticipates that the proposed rule would help protect ecosystems in proximity to cooling water intake structures. The proposal would help preserve aquatic organisms, including threatened and endangered species, and the ecosystems they inhabit in waters used for cooling purposes by existing power producing facilities. EPA considered the potential benefits of the proposed rule and discussed these benefits in both quantitative and non-quantitative terms. Benefits, among other factors, are based on a decrease in expected mortality or injury to aquatic organisms that would otherwise be subject to entrainment into cooling water systems or impingement against screens or other devices at the entrance of cooling water intake structures. Benefits may also accrue at multiple ecological scales including population, community, or ecosystem levels.

In addition to the proposed regulatory requirements, EPA also invited comments on a number of other regulatory alternatives. The Agency will continue to consider all of these regulatory alternatives when making decisions on a final rule.

III. Major Changes to Assumptions Used in EPA's Analyses

Based on comments received, additional information made available, and the results of subsequent analyses,

EPA is considering a number of revisions to the assumptions that were used in developing the engineering costs, the information collection costs, the economic analyses, and the benefits analyses. These new assumptions are presented below and were used in the current analyses, the results of which are presented in this Notice of Data Availability (NODA). EPA requests comment on each of these revised assumptions.

1. Number of Phase II Facilities

Since proposal, EPA verified design flow information for facilities that had been classified as either Phase II or Phase III facilities. This verification resulted in the following changes: five facilities that were classified as Phase II facilities at proposal have been reclassified as Phase III facilities. Conversely, six facilities that were classified as Phase III facilities at proposal have been reclassified as Phase II facilities. As a result, the overall number of Phase II facilities increased from 539 to 540 facilities.¹ For the NODA, all cost and economic analyses are based on the updated set of Phase II facilities.

2. Technology Costs

EPA used new information to revise the capital and operation and maintenance (O&M) costs for several compliance technologies, including those used as the primary basis for the proposed regulatory option. Overall, the cost updates resulted in the following changes. For the preferred option (discussed above at Section II), total capital costs increased by 66 percent and total O&M costs increased by 48 percent. For the waterbody/capacity-based option, which would set performance standards for impingement mortality and entrainment reduction based on closed-cycle, recirculating cooling for some facilities and technologies such as fine-mesh screens and fish-return systems for others, total capital costs increased by 40 percent (net of existing condenser cost savings), while total O&M costs decreased by 13 percent. These comparisons are based on the raw costs, adjusted to year-2002 dollars, which have not been discounted or annualized.²

¹ Note that these numbers are unweighted. On a sample-weighted basis, the number of Phase II facilities increased from 550 to 551.

² Based on additional research between the proposal and the NODA, some facilities also experienced a change in their projected compliance response. This change, together with the increase in in-scope Phase II facilities, may have contributed to the change in total compliance costs. See section IV of the NODA preamble for more information.